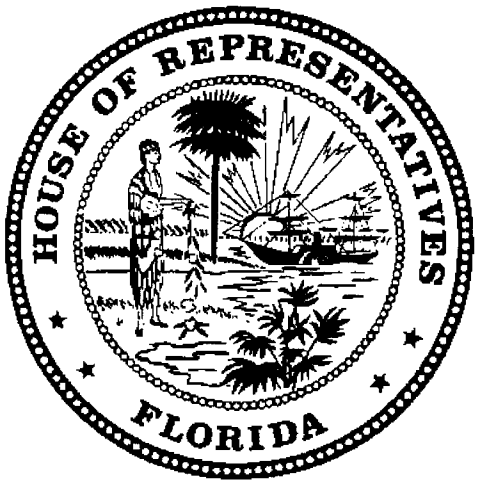

COMMERCE COUNCIL MEETING PACKET

MARCH 9, 2006
1:00 – 1:45 P.M.
ROOM 404-HOB

Allan G. Bense
Speaker

Frank Farkas
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Commerce Council

Start Date and Time:	Thursday, March 09, 2006 01:00 pm
End Date and Time:	Thursday, March 09, 2006 01:45 pm
Location:	404 HOB
Duration:	0.75 hrs

Consideration of the following bill(s):

HB 37 CS Security of Consumer Report Information by Adams
HB 197 Preinsurance Inspection of Private Passenger Motor Vehicles by Hays
HB 219 CS Labor Pools by Troutman
HB 317 CS Stand-Alone Bars by Domino
HB 355 CS Termination of Insurance Appointments by Evers
HB 361 CS Automated Teller Machine Transaction Charges by Carroll
HB 649 CS Warranty Associations by Hasner

NOTICE FINALIZED on 03/07/2006 13:07 by GLATFELTER.SUKIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 37 CS Security of Consumer Report Information
SPONSOR(S): Adams and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	13 Y, 0 N, w/CS	Sheheane	Carlson
2) Agriculture Committee	10 Y, 0 N, w/CS	Reese	Reese
3) Civil Justice Committee	5 Y, 0 N, w/CS	Shaddock	Bond
4) Commerce Council			
5)			

SUMMARY ANALYSIS

The bill defines the term "security freeze" and allows a consumer to place such a freeze on his or her consumer report. A security freeze prohibits a consumer reporting agency from releasing the consumer's report or any information contained within the report without consent of the consumer. A security freeze remains in place until the consumer requests that it be removed or temporarily lifted.

The bill permits a consumer reporting agency to charge a reasonable fee, not to exceed $10, to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report. However, a consumer reporting agency is prohibited from charging any fee to a victim of identity theft seeking a security freeze.

The bill creates a new cause of action for a person who is aggrieved by a violation of the provisions of the bill.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty -- The bill allows a consumer to protect his or her personal information by placing a security freeze on his or her consumer report and to remove or temporarily lift the security freeze at his or her discretion.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

There is currently no Florida legislation that provides for a security freeze or block on consumer information. There are however, twelve states that offer varying forms of credit freezes.[1] Additionally, the Fair Credit Reporting Act[2] (FCRA) enacted by Congress provides two types of fraud alerts that consumers may use to protect themselves against identity theft.[3]

Effect of the Bill

The bill permits a consumer to place a security freeze ("freeze") on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency ("agency").[4] The freeze prohibits the consumer reporting agency from releasing the consumer's report or any information contained within the report without the authorized consent of the consumer.[5] The freeze remains active until the consumer requests it be thawed.[6] The bill does not prohibit a consumer reporting agency from informing a third party that a particular consumer report has been placed under a freeze.[7]

Once a consumer requests a freeze, the agency must place a freeze on a consumer's report no later than five business days after receiving the written request.[8] When the freeze has been initiated, the agency must send the consumer a written confirmation of the freeze within five business days.[9] In that written confirmation, the agency must provide the consumer with a personal identification number or password to be used by the consumer should the consumer wish to provide a limited release of his or her credit report for a designated period of time during the freeze.[10]

If the consumer wishes to allow access to the report for a designated period of time while a freeze is in effect, the consumer must contact the agency and request the freeze be temporarily lifted. In addition, the consumer must provide: proper identification as determined by the consumer reporting agency; the personal identification number or password provided by the agency; and information regarding the specified period of time during which the report will be temporarily available.[11]

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[1] California, Colorado, Connecticut, Illinois, Louisiana, Maine, New Jersey, Nevada, North Carolina, Texas, Vermont, and Washington offer consumers the right to freeze their credit reports. Illinois, Texas, Vermont, and Washington only offer the option of a credit freeze to those consumers affected by identity theft.
[2] 15 U.S.C. ss. 1681 et seq.
[3] There are four bills currently filed in the United States Senate and three bills filed in the House of Representatives relating to the protection of consumer information.
[4] Section 501.005(2).
[5] Section 501.005(1).
[6] Section 501.005(11).
[7] Section 501.005(1).
[8] Section 501.005(3).
[9] Section 501.005(4).
[10] *Id.*
[11] Section 501.005(5).

Once an agency has received a request for the complete removal of a freeze from the consumer, the agency must remove the freeze within three business days.[12] The same timeframe is applicable for a consumer's request for a temporary lift of a freeze.[13] To process requests by consumers for temporary access to the frozen report, an agency must develop either a telephone system or other form of secure electronic media to process consumer requests.[14]

An agency may temporarily lift or remove a freeze only upon the consumer's request[15] or if the consumer report was frozen due to a material misrepresentation of the fact by the consumer.[16] Should the freeze be lifted based upon a material misrepresentation, the agency must notify the consumer in writing before removing the freeze.[17] A third party who requests access to a consumer report may to treat the application as incomplete if the consumer has not authorized a temporary lifting of the freeze for the period of time in which the request is made.[18]

Exemptions

The bill provides the following exemptions for use of a credit report by certain entities regardless of a freeze being placed on a consumer's report:

- Any person to whom the consumer owes a financial obligation under certain circumstances;[19]
- A subsidiary, affiliate, agent, assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;[20]
- Any state agency acting within its lawful investigative or regulatory authority;[21]
- A state or local law enforcement agency acting to investigate a crime or conducting a criminal background check;[22]
- Any person administering a credit file monitoring subscription service to which the consumer has subscribed;[23]
- Any person for the purpose of providing a consumer with a copy of the consumer's report upon the consumer's request;[24]
- Pursuant to a court order lawfully entered;[25] or
- The use of credit information for the purposes of prescreening as provided for by the FCRA.[26]

In addition, check services companies and demand deposit account information services companies are not required to place a freeze on a consumer's report.[27] Fraud prevention services companies

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[12] Section 501.005(11).
[13] Section 501.005(6).
[14] Section 501.005(7).
[15] Section 501.005(8)(a).
[16] Section 501.005(8)(b).
[17] *Id.*
[18] Section 501.005(9).
[19] Section 501.005(12)(a).
[20] Section 501.005(12)(b).
[21] Section 501.005(12)(c).
[22] Section 501.005(12)(d).
[23] Section 501.005(12)(e).
[24] Section 501.005(12)(f).
[25] Section 501.005(12)(g).
[26] Section 501.005(12)(h).

issuing reports to prevent or investigate fraud are also exempt.[28] Resellers of consumer information are also exempt, however, they must honor a freeze placed on a consumer report.[29]

Fees

A consumer reporting agency may not charge a fee to a victim of identity theft who has submitted, at the time the freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency concerning the unlawful use of the victim's identifying information by another.[30] An agency may charge any other person a fee, not to exceed $10, when the consumer elects to place, remove, or temporarily lift a security freeze on his or her consumer report.[31] Additionally, a consumer may be charged a fee, not to exceed $10, if the consumer forgets or misplaces the identification number or password provided by the agency and the agency must reissue the information or provide new information to the consumer.[32]

Consumer Information

An agency may not change a consumer's official information in a consumer report when a freeze is in effect without sending a written confirmation of the change to the consumer within 30 days of making the change.[33] "Official information" includes the consumer's name, address, date of birth, and social security number.[34] In the case of an address change, the written confirmation must be sent to both the new and former addresses of the consumer.[35] Nevertheless, a written confirmation is not required for technical modifications to a consumer's official information, this information can include name and street abbreviations, complete spellings, or transposition of numbers or letters.[36]

Cause of Action

The bill creates a new cause of action for any person who is aggrieved by a violation of the provisions of the bill.[37] The provisions for a civil action are:

- Any person who willfully fails to comply with any requirement of the bill with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000, plus the costs of the action together with reasonable attorney's fees;[38]

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[27] Section 501.005(15)(a). The bill provides that a check services company "issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment." *Id.* A demand deposit account information service company "issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution, as defined in s. 655.005(1)(g) or (h), or in federal law." Section 501.005(15)(b).
[28] Section 501.005(15)(b).
[29] Section 501.005(15)(c). Specifically, the bill provides that the provisions of the bill do not apply to "[a] consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency shall honor any security freeze placed on a consumer report by another consumer reporting agency." *Id.*
[30] Section 501.005(13).
[31] *Id.*
[32] *Id.*
[33] Section 501.005(14).
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] Section 501.005(16).
[38] Section 501.005(16)(a).

- Any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is liable to the consumer for actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000, whichever is greater. Any person who obtains a consumer report from an agency under false pretenses or knowingly without a permissible purpose is liable to the agency for actual damages sustained by the agency or $1,000, whichever is greater;[39]

- Punitive damages may be assessed for willful violations of the bill;[40]

- Any person who is negligent in failing to comply with any requirement imposed by the bill with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000;[41] and

- If a court determines an unsuccessful pleading, motion, or other paper filed in connection with an action under this bill was filed in bad faith or for purposes of harassment, the court must award to the prevailing party reasonable attorney's fees in relation to the work performed in responding to that pleading, motion, or other paper.[42]

Disclosure

An agency must include a written summary of all rights under the bill to a consumer residing in this state when sending that consumer a written disclosure. The bill details the information that must be included in the written summary of consumer rights, including the right to civil action. Agencies which maintain consumer reports on a nationwide basis must provide a toll free telephone number for the consumer to use to communicate with the agency.[43]

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[39] Section 501.005(16)(b).
[40] Section 501.005(16)(c).
[41] Section 501.005(16)(d).
[42] Section 501.005(16)(e).
[43] Specifically, the bill provides in s. 501.005(17) what a written disclosure must consist of:

> Any written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this state shall include a written summary of all rights the consumer has under this section, and, in the case of a consumer reporting agency which compiles and maintains consumer reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer reporting agency. The information set forth in paragraph (b) of the written summary of rights must be in at least 14-point boldface type in capital letters. The written summary of rights required under this section is sufficient if it is substantially in the following form:
>
> (a) You have a right to place a "security freeze" on your consumer report, which will prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization. A security freeze must be requested in writing by certified mail to a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent.
>
> (b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN YOUR CONSUMER REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION YOU MAKE REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT, LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN EXTENSION OF CREDIT AT POINT OF SALE.
>
> (c) When you place a security freeze on your consumer report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a designated period of time after the security freeze is

C. SECTION DIRECTORY:

Section 1 creates s. 501.005, F.S., providing for a credit freeze by a consumer.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill permits a consumer reporting agency to charge a reasonable fee, not to exceed $10, to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report, with the exception of a victim of identity theft.

D. FISCAL COMMENTS:

None.

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in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password.

2. Proper identification to verify your identity.

3. Information specifying the period of time for which the report shall be made available. (d) A consumer reporting agency must authorize the release of your consumer report no later than 3 business days after receiving the above information.

(e) A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your consumer report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(f) You have the right to bring a civil action against anyone, including a consumer reporting agency, who fails to comply with the provisions of s. 501.005, Florida Statutes, which governs the placing of a consumer report security freeze on your consumer report.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On October 18, 2005, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment does the following:

- Decreases the time in which a consumer reporting agency must send a written confirmation of the security freeze to a consumer from 10 days to 5 days.
- Provides that a consumer credit reporting agency must strive to process within 15 minutes a request from a consumer to temporarily lift his or her security freeze.
- Clarifies the entities that are exempt from a security freeze and may access a credit report to include state agencies, local or state law enforcement and other appropriate persons.
- Provides that a consumer credit reporting agency may not charge a consumer to place a security freeze on his or her credit report, but may impose a fee, of not more than $5, for the consumer to temporarily lift or remove a security freeze from his or her credit report.
- Provides that a consumer credit reporting agency may charge a fee, not more than $5, if a consumer fails to retain the original personal identification number or password provided by the consumer credit reporting agency and the agency must reissue the information to the consumer.
- Clarifies that a civil action may be brought for the knowing or willful violation of the bill's provisions.
- Provides that a consumer wishing to place a security freeze on his or her credit report must do so in writing by certified mail to a consumer credit reporting agency.
- Clarifies that the temporary lifting of a security freeze is for a specific period of time, not for a specific recipient.

On January 11, 2006, the Agriculture Committee adopted a strike-all amendment to the bill. The amendment:

- Provides definitions for the term "consumer report security freeze" or "security freeze".
- Changes the terms "consumer credit reporting agencies" to "consumer reporting agencies" and "credit reports" to "consumer reports" for uniformity with the federal Fair Credit Reporting Act.
- Allows for a reasonable fee, not to exceed $10, to place, temporarily lift or permanently remove a freeze, or to receive a new PIN.
- Provides that documented victims of identity theft may place a freeze at no charge.
- Adopts the civil liability language of the Fair Credit Reporting Act.
- Includes penalties for both willful and negligent violations of the security freeze. The liability includes those entities who fail to comply, willfully or negligently, with the freeze, as well as those individuals

who knowingly obtain a consumer report under false pretenses or knowingly without a permissible purpose.
- Allows for attorney's fees for actions filed in bad faith or for the purposes of harassment.
- Eliminates the 15 minute "goal" for removing the freeze.
- Requires the portion of the "written summary of rights" relating to items that could be impacted by the credit freeze, to be in at least 14 point, boldface, capital letters.

On February 8, 2006, the Civil Justice Committee adopted five amendments to the bill. The first two amendments limit the application of the bill to Florida. Amendment three limits damages for a willful violation regarding a credit freeze to no less than $100 nor more than $1,000. Amendment four removed the attorney's fees and costs provision for a negligent violation of the bill. Amendment five provided for the recovery of attorney's fees and costs for a willful violation regarding a credit freeze. The bill was then reported favorably with a committee substitute.

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to security of consumer report information; creating s. 501.005, F.S.; defining "consumer report security freeze"; authorizing a consumer to place a security freeze on his or her consumer report; providing procedures and requirements with respect to the placement, temporary suspension, and removal of a security freeze on a consumer report; authorizing a consumer to allow specified temporary access to his or her consumer report during a security freeze; providing procedures with respect to such temporary access; providing for removal of a security freeze when a consumer report was frozen due to a material misrepresentation of fact by the consumer; providing applicability; prohibiting a consumer reporting agency from charging a fee to a victim of identity theft who requests a security freeze on a consumer report; authorizing consumer reporting agencies to charge a fee to place, remove, or temporarily lift a security freeze and

to reissue a personal identification number; restricting the change of specified information in a consumer report when a security freeze is in effect; specifying applicability with respect to certain consumer reporting agencies; specifying entities that are exempt from placing a security freeze on a consumer report; providing for civil remedy; providing requirements with respect to written disclosure by a consumer reporting agency of procedures and consumer rights associated with a security freeze; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.005, Florida Statutes, is created to read:

501.005 Consumer report security freeze.--

(1) For purposes of this section, "consumer report security freeze" or "security freeze" means a notice placed in a consumer report that prohibits a consumer reporting agency, as defined in 15 U.S.C. s. 1681a(f), from releasing the consumer report, credit score, or any information contained within the consumer report, to a third party without the express authorization of the consumer. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

(2) A consumer may place a security freeze on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency.

(3) A consumer reporting agency shall place a security freeze on a consumer report no later than 5 business days after receiving a request from the consumer.

(4) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 business days after instituting the security freeze and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the limited release of his or her consumer report for a designated period of time during the security freeze as provided in subsection (5).

(5) A consumer may allow his or her consumer report to be accessed for a designated period of time while a security freeze is in effect by contacting the consumer reporting agency and requesting that the freeze be temporarily lifted. The consumer must provide the following information to the consumer reporting agency as part of the request:

(a) Proper identification as determined by the consumer reporting agency.

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (4).

(c) Information specifying the period of time for which the report shall be made available.

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (5) shall comply with the request no later than 3 business days after receiving the request.

(7) A consumer reporting agency doing business in this state shall develop telephonic communication or any form of secure electronic media to receive and process a request from a consumer pursuant to subsection (5).

(8) A consumer reporting agency shall temporarily lift or remove a security freeze placed on a consumer report only in the following instances:

(a) Upon consumer request, pursuant to subsection (5) or subsection (11).

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a security freeze on a consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing prior to removing the security freeze.

(9) A third party requesting access to a consumer report on which a security freeze is in effect in connection with an application for credit or other permissible use may treat the application as incomplete if the consumer has not authorized a temporary lifting of the security freeze for the period of time during which the request is made.

(10) If a consumer requests a security freeze, the consumer reporting agency shall disclose to the consumer all information relevant to the process of instituting, temporarily

lifting, and removing a security freeze and shall include the disclosure required by subsection (17).

(11) A security freeze shall remain in place until the consumer requests that it be removed. A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal from the consumer, who, upon making the request for removal, must provide the following:

(a) Proper identification as determined by the consumer reporting agency.

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (4).

(12) The provisions of this section do not apply to the use of a consumer report by the following persons or for the following reasons:

(a) A person to whom the consumer owes a financial obligation or a subsidiary, affiliate, or agent of the person, or an assignee of a financial obligation owed by the consumer to the person, or a prospective assignee of a financial obligation owed by the consumer to the person in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owed for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities

related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under this section for purposes of facilitating the extension of credit or other permissible use.

(c) A state agency acting within its lawful investigative or regulatory authority.

(d) A state or local law enforcement agency acting to investigate a crime or conducting a criminal background check.

(e) Any person administering a credit file monitoring subscription service to which the consumer has subscribed.

(f) Any person for the purpose of providing a consumer with a copy of the consumer report upon the consumer's request.

(g) Pursuant to a court order lawfully entered.

(h) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(13) A consumer reporting agency shall not charge any fee to a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person. A consumer reporting agency may charge a reasonable fee, not to exceed $10, to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report. A consumer may be charged a reasonable fee, not to exceed $10, if the consumer fails to retain the original

personal identification number or password provided by the consumer reporting agency, and the agency must reissue the personal identification number or password or provide a new personal identification number or password to the consumer.

(14) If a security freeze is in effect, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within 30 days after the change is posted to the consumer's file:

(a) Name.

(b) Address.

(c) Date of birth.

(d) Social security number.

Written confirmation is not required for technical corrections of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(15) The provisions of this section do not apply to the following entities:

(a) A check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(b) A demand deposit account information service company, which issues reports regarding account closures due to fraud,

substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution, as defined in s. 655.005(1)(g) or (h), or in federal law.

(c) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency shall honor any security freeze placed on a consumer report by another consumer reporting agency.

(d) A fraud prevention services company issuing reports to prevent or investigate fraud.

(16) In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of this section may bring a civil action as authorized by this subsection.

(a) Any person who willfully fails to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000, plus the cost of the action together with reasonable attorney's fees.

(b) Any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is

liable to the consumer for actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000, whichever is greater. Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Punitive damages may be assessed for willful violations of this section.

(d) Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000.

(e) Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this subsection was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

(17) Any written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this state shall include a written summary of all rights the consumer has under this section, and, in the case of a consumer reporting agency which compiles and maintains consumer reports on a nationwide basis, a toll-free telephone number which the

consumer can use to communicate with the consumer reporting agency. The information set forth in paragraph (b) of the written summary of rights must be in at least 14-point boldface type in capital letters. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(a) You have a right to place a "security freeze" on your consumer report, which will prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization. A security freeze must be requested in writing by certified mail to a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent.

(b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN YOUR CONSUMER REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION YOU MAKE REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT, LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN EXTENSION OF CREDIT AT POINT OF SALE.

(c) When you place a security freeze on your consumer report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a designated period of time after the security freeze is in

place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password.

2. Proper identification to verify your identity.

3. Information specifying the period of time for which the report shall be made available.

(d) A consumer reporting agency must authorize the release of your consumer report no later than 3 business days after receiving the above information.

(e) A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your consumer report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(f) You have the right to bring a civil action against anyone, including a consumer reporting agency, who fails to comply with the provisions of s. 501.005, Florida Statutes, which governs the placing of a consumer report security freeze on your consumer report.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **37**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Commerce Council

Representative(s) Adams offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 501.005, Florida Statutes, is created to read:

501.005 Consumer report security freeze.--

(1) For purposes of this section, ~~"consumer report security freeze" or~~ a "security freeze" means a notice placed in a consumer report that prohibits a consumer reporting agency, as defined in 15 U.S.C. s. 1681a(f), from releasing the consumer report, credit score, or any information contained within the consumer report~~,~~ to a third party relating to the extension of credit without the express authorization of the consumer. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report. For purposes of this part, the term "consumer report" has the same meaning set forth in 15 U.S.C. s. 1681a(d).

(2) A consumer may place a security freeze on his or her consumer report by:

1. Making a request in writing by certified mail to a consumer reporting agency;

2. Including information that properly identifies the consumer; and

3. Paying a fee authorized under this section.

(3) A consumer reporting agency shall place a security freeze on a consumer report no later than 5 business days after receiving a request from the consumer.

(4) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 10~~5~~ business days after instituting the security freeze and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the ~~limited release of~~removal of a security freeze on his or her consumer report ~~for a designated period of time during the security freeze as provided in~~ pursuant to subsections (5) or (11).

(5) A consumer may allow his or her consumer report to be accessed for a designated period of time while a security freeze is in effect by contacting the consumer reporting agency and requesting that the freeze be temporarily lifted. The consumer must provide the following information to the consumer reporting agency as part of the request:

(a) Proper identification as determined by the consumer reporting agency.

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (4).

(c) Information specifying the period of time for which the report shall be made available.

(d) Payment of a fee authorized by this section.

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (5) shall comply with the request no later than 3 business days after receiving the request.

(7) A consumer reporting agency doing business in this state shall develop telephonic communication or any form of secure electronic media to receive and process a request from a consumer pursuant to subsection (5).

(8) A consumer reporting agency shall temporarily lift or remove a security freeze placed on a consumer report only in the following instances:

(a) Upon consumer request, pursuant to subsection (5) or subsection (11).

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a security freeze on a consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing prior to removing the security freeze.

(9) A third party requesting access to a consumer report on which a security freeze is in effect in connection with an application for credit or other permissible use may treat the application as incomplete if the consumer has not authorized a temporary lifting of the security freeze for the period of time during which the request is made.

(10) If a consumer requests a security freeze, the consumer reporting agency shall disclose to the consumer all

information relevant to the process of instituting, temporarily lifting, and removing a security freeze and shall include the disclosure required by subsection (17).

(11) A security freeze shall remain in place until the consumer requests that it be removed. A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal from the consumer, who, upon making the request for removal, must provide the following:

(a) Proper identification as determined by the consumer reporting agency.

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (4).

(c) Payment of a fee authorized by this section.

(12) The provisions of this section do not apply to the use of a consumer report by the following persons or for the following reasons:

(a) A person to whom the consumer owes a financial obligation or a subsidiary, affiliate, or agent of the person, or an assignee of a financial obligation owed by the consumer to the person, or a prospective assignee of a financial obligation owed by the consumer to the person in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a ~~demand~~ deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owed for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities

related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(b) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under this section for purposes of facilitating the extension of credit or other permissible use.

(c) A state agency acting within its lawful investigative or regulatory authority.

(d) A state or local law enforcement agency acting to investigate a crime or conducting a criminal background check.

(e) Any person administering a credit file monitoring subscription service to which the consumer has subscribed.

(f) Any person for the purpose of providing a consumer with a copy of the consumer report upon the consumer's request.

(g) Pursuant to a court order lawfully entered.

(h) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(i) Any person in connection with the underwriting of insurance.

(13) A consumer reporting agency shall not charge any fee to a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person. A consumer reporting agency may charge a reasonable fee, not to exceed $10, to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report. A consumer may be charged a reasonable fee, not to exceed $10, if the consumer fails to retain the original

personal identification number or password provided by the consumer reporting agency, and the agency must reissue the personal identification number or password or provide a new personal identification number or password to the consumer.

(14) If a security freeze is in effect, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within 30 days after the change is posted to the consumer's file:

(a) Name.

(b) Address.

(c) Date of birth.

(d) Social security number.

Written confirmation is not required for technical corrections of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

(15) The provisions of this section do not apply to the following entities:

(a) A check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(b) A ~~demand~~ deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer to inquiring

banks or other financial institutions for use only in reviewing a consumer request for a ~~demand~~ deposit account at the inquiring bank or financial institution, as defined in s. 655.005(1)(g) or (h), or in federal law.

(c) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency shall honor any security freeze placed on a consumer report by another consumer reporting agency.

(d) A fraud prevention services company issuing reports to prevent or investigate fraud.

(16) In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of this section may bring a civil action as authorized by this subsection.

(a) Any person who willfully fails to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000, plus the cost of the action together with reasonable attorney's fees.

(b) Any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is liable to the consumer for actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000, whichever is greater. Any person who obtains a consumer report from a consumer reporting agency

under false pretenses or knowingly without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Punitive damages may be assessed for willful violations of this section.

(d) Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000.

(e) Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this subsection was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

(17) Any written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this state shall include a written summary of all rights the consumer has under this section, and, in the case of a consumer reporting agency which compiles and maintains consumer reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer reporting agency. The information set forth in paragraph (b) of the written summary of rights must be in at least 14-point boldface type in capital letters. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(a) You have a right to place a "security freeze" on your consumer report, which will prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization. A security freeze must be requested in writing by certified mail to a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent.

(b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN YOUR CONSUMER REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION YOU MAKE REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT, LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN EXTENSION OF CREDIT AT POINT OF SALE.

(c) When you place a security freeze on your consumer report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a designated period of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password.

2. Proper identification to verify your identity.

3. Information specifying the period of time for which the report shall be made available.

4. Payment of a fee authorized by this section.

(d) A consumer reporting agency must authorize the release of your consumer report no later than 3 business days after receiving the above information.

(e) A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your consumer report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(f) You have the right to bring a civil action against anyone, including a consumer reporting agency, who fails to comply with the provisions of s. 501.005, Florida Statutes, which governs the placing of a consumer report security freeze on your consumer report.

Section 2. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to security of consumer report information; creating s. 501.005, F.S.; defining ~~"consumer report~~ "security freeze"; authorizing a consumer to place a security freeze on his or her consumer report; providing procedures and requirements with respect to the placement, temporary suspension, and removal of a security freeze on a consumer report; authorizing a consumer to allow

specified temporary access to his or her consumer report during a security freeze; providing procedures with respect to such temporary access; providing for removal of a security freeze when a consumer report was frozen due to a material misrepresentation of fact by the consumer; providing applicability; prohibiting a consumer reporting agency from charging a fee to a victim of identity theft who requests a security freeze on a consumer report; authorizing consumer reporting agencies to charge a fee to place, remove, or temporarily lift a security freeze and to reissue a personal identification number; restricting the change of specified information in a consumer report when a security freeze is in effect; specifying applicability with respect to certain consumer reporting agencies; specifying entities that are exempt from placing a security freeze on a consumer report; providing for civil remedy; providing requirements with respect to written disclosure by a consumer reporting agency of procedures and consumer rights associated with a security freeze; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 197 Preinsurance Inspection of Private Passenger Motor Vehicles
SPONSOR(S): Hays
TIED BILLS: **IDEN./SIM. BILLS:** SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	13 Y, 2 N	Freire	Cooper
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Currently, before a private passenger motor vehicle can be insured, s. 627.744, F.S. requires the vehicle to undergo a preinsurance inspection. The statute lists various exceptions to the preinsurance inspection requirement, and the inspection is only required in 7 counties. These counties are: Miami-Dade, Broward, Palm Beach, Orange, Pinellas, Hillsborough, and Duval counties.

This bill repeals s. 627.744, F.S. relating to required preinsurance inspection of private passenger motor vehicles. It removes an insurance company's obligation to inspect a motor vehicle before providing physical damage coverage, including collision and comprehensive coverage.

Proponents of the bill claim that the statute lacks efficacy because of its numerous exceptions. They also claim that other statutes requiring insurance companies to have Special Investigative Units adequately address insurance fraud. Opponents of the bill argue that insurance fraud will increase if the statute is repealed because preinsurance inspection aims to rule out fraud whereas the Special Investigative Units only fight fraud retroactively.

This bill does not have a fiscal impact on state or local government.

This bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill repeals the preinsurance inspection requirement for private passenger motor vehicles set forth in s. 627.744, F.S.

B. EFFECT OF PROPOSED CHANGES:

Section 627.744, F.S.[1] requires a private passenger motor vehicle insurance policy providing physical damage coverage, including collision or comprehensive coverage, to undergo a preinsurance inspection. The statute lists 12 exceptions to its preinsurance inspection requirement. It is only applicable in counties with a 1988 estimated population of over 500,000.[2] These counties are Miami-Dade, Broward, Palm Beach, Orange, Pinellas, Hillsborough, and Duval counties. The statute also does not apply to policyholders who have been insured for 2 or more consecutive years with the same insurer; to a new, unused motor vehicle as long as the insurer is provided with certain documentation; to a temporary substitute vehicle; to a motor vehicle leased for less than 6 months; to a vehicle that is more than 10 years old; to a renewal policy; to an insured vehicle that is under a commercially rated policy that insures five or more vehicles, and when an insurance producer is transferring a book of business from one insurer to another.

The inspection of those vehicles not exempt by the statute must include: taking a physical imprint of the vehicle identification number of the vehicle or otherwise recording the vehicle identification; recording the presence of accessories required by the commission to be recorded; and recording the locations of and a description of existing damage to the vehicle. Section 627.744(4), F.S. allows insurance companies to charge policyholders up to $5 per inspection.

According to the Office of Insurance Regulation, the bill's original purpose was to prevent fraud by requiring insurance companies to document any pre-existing damages to the insured vehicle and to record the insured vehicle's VIN number.[3] The recorded information prevents the insurer from paying a claim for a "total loss" vehicle or repairing a vehicle's pre-existing damages. The VIN number serves to identify the vehicle's owner as the insurance claimant.

Representatives from State Farm and Progressive Auto Insurance Companies contend that s. 627.744, F.S. is a cumbersome statute with questionable efficacy due to the large number of exceptions and its applicability in few counties.[4] Progressive (representing 7 percent of the auto insurance market) estimates that it does about 7,000 inspections per month.[5] Industry-wide, Progressive estimates that there are 100,000 inspections done each month at a cost of $9 per inspection, or $10.8 million per year. This cost is built into the company's rate.[6]

Progressive finds that s. 626.9891, F.S., which created the Special Investigative Units, addresses insurance fraud more adequately. Progressive argues that that preinsurance inspections were created to eliminate "paper cars", but today, criminals have moved on to "cloning" vehicles which are not detectable by preinsurance inspections. Progressive also states that while preinsurance inspections

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[1] s. 627.744, F.S. became law in 1990.
[2] s. 627.744(g), F.S. (2005).
[3] Office of Insurance Regulation Legislative Analysis on HB 197 and SB 420.
[4] Telephone conversation with a representative from Progressive on November 23, 2005; telephone conversation with a representative from State Farm Insurance on December 14, 2005.
[5] Data gathered by a representative from Progressive on January 18, 2006.
[6] While s. 627.744(4), F.S. allows insurance companies to charge customers up to $5 for an inspection, Progressive does not charge customers directly; rather, Progressive has built the cost of inspections into the company's rate.

are thought to detect prior damages, their claims representatives are trained to identify pre-existing damages.

A representative from CARCO[7], an automobile inspection group, opposes the bill. CARCO argues that the Special Investigative Units are insufficient because they only investigate fraud after fraud is suspected. CARCO's position is that it is easier to deter fraud after insurance companies have all information pertaining to the vehicle they are insuring. CARCO points to a study completed in 1993 that showed that two years after s. 627.744, F.S. was enacted, the seven counties with required preinsurance inspection saw an 8.4 percent decrease in vehicle theft whereas their surrounding counties suffered an 8.8 percent increase in vehicle theft.[8]

A representative from the Division of Insurance Fraud within the Department of Financial Services stated that the bill may promote fraudulent behavior because without it, a policyholder can purchase a wrecked vehicle and fraudulently tell the insurance company that the car was not purchased under that condition or damaged in any other way.[9] The department believes that the preinsurance inspection statute reduces fraud and ultimately, the statute's repeal could negatively impact the insurance industry.

C. SECTION DIRECTORY:

Section 1. Repeals s. 627.744, F.S., which requires preinsurance inspection of private motor vehicles.

Section 2. Provides that the bill will be effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that insurance companies build in the price of preinsurance inspections to a customer's insurance cost, this bill saves customers the cost of preinsurance inspections. According to Progressive, that is $9 per inspection. According to the Office of Insurance Regulation, the private sector will be

[7] CARCO is a nation-wide automobile inspection group hired by insurance companies to do preinsurance inspection on vehicles.

[8] Mark Cooper, *Auto Insurance Fraud: An Analysis of the Effectiveness of Anti-Fraud Programs*, Prepared for: The Coalition Against Insurance Fraud, June 1993. The decrease in reported thefts may have conincided with the passing of s. 627.744, F.S. because by having the required preinsurance inspection, there may have been a decrease in the number of falsified thefts.

[9] Telephone conversation with a representative from the Division of Insurance Fraud within the Department of Financial Services on December 15, 2005.

affected to the extent that vehicle inspections can be demonstrated to reduce insurance fraud, and those savings contribute to the stability of the motor vehicle market.[10]

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other: None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS: Section 627.744, F.S. may be expanded by SB 1384, relating to preinsurance inspections. This bill seeks to delete the exceptions to preinsurance inspection of private passenger motor vehicles, deletes the requirement to take imprint of vehicle identification number, and requires that certain digital images of the vehicle be made.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[10] Office of Insurance Regulation Legislative Analysis complete on November 2, 2005.

A bill to be entitled

An act relating to preinsurance inspection of private passenger motor vehicles; repealing s. 627.744, F.S., relating to a prohibition against issuing a private passenger motor vehicle insurance policy providing physical damage coverage, including collision or comprehensive coverage, unless the insurer first inspects the vehicle; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.744, Florida Statutes, is repealed.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 219 CS Labor Pools
SPONSOR(S): Troutman and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	13 Y, 0 N, w/CS	Carlson	Carlson
2) Agriculture Committee	9 Y, 0 N	Kaiser	Reese
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

House Bill 219 limits the charges that a labor pool may impose for the transportation of a laborer to or from a designated worksite to no more than $1.50 each way.

The bill allows a labor pool to operate a cash dispensing machine located on the premises of the labor pool or by an affiliate, and limits the transaction fee to $1.99.

The bill provides that the Labor Pool Act does not exempt a client of a labor pool or a temporary help arrangement entity or any assigned employee from federal, state or local licensing laws.

The bill also provides that an employee assigned to a client company who is licensed, registered or certified pursuant to law is deemed an employee of the client company for purposes of such licensure, registration or certification but remains an employee of the labor pool or temporary help arrangement entity for purposes of workers' compensation and unemployment compensation laws.

The bill has no apparent fiscal impact on state or local governments.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Labor Pool Act

The Labor Pool Act, passed as ch. 95-332, L.O.F. and codified as Part II of ch. 448, F.S., is intended to provide for the health, safety and well-being of day laborers throughout the state and to establish uniform standards of conduct and practice for labor pools. The law enumerates duties of labor pools with respect to the compensation of laborers and the provision of necessary amenities and facilities.

A. Transportation Charges

The Act prohibits a labor pool from charging a day laborer for transportation to or from a designated worksite an amount exceeding the prevailing rate for public transportation in a geographic area.[1]

B. Cash Dispensing Machines

The Act requires a labor pool to compensate a day laborer for work performed "in the form of cash, or commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount.[2]

Since passage of the Labor Pool Act, cash dispensing machines (CDMs) have become available as a method of dispensing cash compensation to day laborers. A CDM is similar to an automated teller machine (ATM) and dispenses money in paper currency, but not in coins. Labor pools may either own or lease CDMs. A financial institution under a contract with the labor pool typically provides the cash stored in the CDM.

There has been some question as to whether or not a CDM should comply with chapter 560, F.S., the Money Transmitters' Code. The statute is designed to insure the security of a business that issues payment products, holds public funds, accepts deposits, and conducts other types of financial transactions. The labor pool CDM holds funds that are the property of the labor pool, the CDM is not accessible by the general public, and the CDMs only dispense cash.

Effect of Proposed Changes:

A. Transportation Charges

The bill limits the charges that a labor pool may impose on a laborer for transportation to or from a designated worksite to no more than $1.50 each way.

[1] s. 448.24(1)(b), F.S.
[2] s. 448.24(2)(a), F.S.

B. Cash Dispensing Machines

The bill allows a labor pool to operate a CDM located on the premises of the labor pool or by an affiliate, pursuant to chapter 560, F.S., if required, for a per-transaction fee of up to $1.99. In order to use a CDM as permitted by the bill, the labor pool must comply with the compensation provisions of s. 448.24(2)(a), F.S.; the day laborer must voluntarily elect to accept payment in cash after disclosure of the fee; and the CDM must require an affirmative action by the laborer regarding the fee that allows the laborer to negate the transaction in lieu of payment according to s. 448.24(2)(a), F.S.

C. Application of the Labor Pool Act and Status of Assigned Employees

The bill provides that the Labor Pool Act does not exempt a client of a labor pool or a temporary help arrangement entity or any assigned employee from federal, state or local licensing laws.

The bill also provides that an employee assigned to a client company who is licensed, registered or certified pursuant to law is deemed an employee of the client company for purposes of such licensure, registration or certification but remains an employee of the labor pool or temporary help arrangement entity for purposes of workers' compensation and unemployment compensation laws.

C. SECTION DIRECTORY:

Section 1: Amends s. 448.24, F.S., relating the transportation fees and the use of cash-dispensing machines.
Section 2: Amends s. 448.23, F.S., conforming a cross reference.
Section 3: Creates s. 448.26, F.S., providing that the Labor Pool Act does not exempt a labor pool or temporary help entity from federal, state or local licensing laws and providing that assigned employees are employees of the client company for licensing purposes but retain status as employees of the labor pool or temporary help arrangement entity for workers' compensation and unemployment compensation purposes.
Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows a labor pool to recover the costs of CDMs used to pay laborers. Each laborer choosing to use a CDM on which a fee is imposed will have a net deduction of up to $1.99 from his/her daily pay.

It is unclear whether the imposition of the maximum fee will result in a net profit to the labor pool. This depends on the actual operating costs for and number of CDMs operated by the labor pool and the number of laborers paid on a given day.

The bill may also limit the transportation costs for a laborer by capping round-trip fees to $3.00.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 10, 2005, the Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill. The technical amendment restored current law in s. 448.24(1)(a), F.S., and corrected drafting errors in section 3 of the bill, relating to new s. 448.26, F.S.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to labor pools; amending s. 448.24, F.S.; providing a limit on the amount a labor pool may charge a laborer for transportation to or from a designated worksite; authorizing a labor pool to provide day laborers with a method of obtaining cash from a cash-dispensing machine; amending s. 448.23, F.S.; conforming a cross-reference; creating s. 448.26, F.S.; providing for application of pt. II of ch. 448, F.S., the Labor Pool Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 448.24, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

448.24 Duties and rights.--

(1) No labor pool shall charge a day laborer:

(b) More than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed $1.50 each way ~~the prevailing rate for public transportation in the geographic area~~; or

(7) Nothing in this part precludes the labor pool from providing a day laborer with a method of obtaining cash from a cash-dispensing machine that is located on the premises of the labor pool and is operated by the labor pool, or by an affiliate, pursuant to chapter 560, if required, for a fee for each transaction which may not exceed $1.99, provided:

(a) The labor pool offers payment in compliance with the provisions of paragraph (2)(a).

(b) The day laborer voluntarily elects to accept payment in cash after disclosure of the fee.

(c) The cash-dispensing machine requires affirmative action by the day laborer with respect to imposition of the fee and allows the day laborer to negate the transaction in lieu of payment in compliance with paragraph (2)(a).

Section 2. Section 448.23, Florida Statutes, is amended to read:

448.23 Exclusions.--Except as specified in ss. ~~s.~~ 448.22(1)(c) and 448.26, this part does not apply to:

(1) Business entities duly registered as farm labor contractors pursuant to part III of chapter 450;

(2) Employee leasing companies, as defined in s. 468.520;

(3) Temporary help services engaged in supplying solely white collar employees, secretarial employees, clerical employees, or skilled laborers;

(4) Labor union hiring halls; or

(5) Labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use.

Section 3. Section 448.26, Florida Statutes, is created to read:

448.26 Application.--Nothing in this part shall exempt any client of any labor pool or temporary help arrangement entity as defined in s. 468.520(4)(a) or any assigned employee from any other license requirements of state, local, or federal law. Any employee assigned to a client who is licensed, registered, or certified pursuant to law shall be deemed an employee of the client for such licensure purposes but shall remain an employee of the labor pool or temporary help arrangement entity for purposes of chapters 440 and 443.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 317 CS Stand-Alone Bars
SPONSOR(S): Domino
TIED BILLS: **IDEN./SIM. BILLS:** SB 600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	18 Y, 0 N, w/CS	Morris	Liepshutz
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

For purposes of ensuring compliance with provisions of the Clean Indoor Air Act limiting those indoor work areas where smoking is allowed, Florida law requires certain alcoholic beverage establishments that also serve food [stand-alone bars] to annually submit to the Division of Alcoholic Beverages and Tobacco [Division] in the Department of Business and Professional Regulation an affidavit that certifies compliance with the 10 percent threshold limitation for food sales. Thereafter, every three years after the initial designation as a stand alone bar, the licensee must submit an "agreed upon procedures report" prepared by a certified public accountant that attests to the licensee's compliance with the food sales limitation for the preceding 36-month period.

This legislation repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The legislation retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis and provides additional penalties for knowingly making a false statement on the affidavit.

The provisions of this legislation do not appear to have any fiscal impact on state or local government revenue expenditures or collections.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill eliminates a requirement that certain alcoholic beverage establishments [stand-alone bars] submit an "agreed upon procedures report" prepared by a certified public accountant to the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation.

B. EFFECT OF PROPOSED CHANGES:

Article X, Section 20 – Smoking in Enclosed Indoor Workplaces

At the November 2002 General Election, voters approved Constitutional Amendment No. 6, to prohibit tobacco smoking in enclosed indoor workplaces. The stated purpose of this constitutional revision, codified as s. 20, art. X, Florida Constitution, was to protect people from the health hazards of second-hand tobacco smoke by prohibiting workplace smoking. The constitutional amendment provided limited exceptions to the prohibition on indoor smoking including an exception for "stand-alone bars". The constitutional amendment required the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." Implementing legislation [HB 63A – Chapter No. 2003-398, LOF] was subsequently enacted by the 2003 Legislature.

Food Service in Stand-Alone Bars

The constitutional amendment defined a stand-alone bar to mean:

> ...any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, *if any, is merely incidental* to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. [Emphasis supplied]

Section 561.695, Florida Statutes, created three specific requirements for a stand-alone bar. First, a stand alone bar must be "devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises." Second, the serving of food, if any, must be "merely incidental" to the consumption of alcoholic beverages. Third, the business must not be "located within, [or] share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue."

An important caveat of the stand-alone bar definition is the requirement that the serving of food must be "merely incidental" to the consumption of alcoholic beverages. Section 561.695(5), F.S., defines "merely incidental" as a limit that a stand-alone bar derive no more than 10 percent of its gross revenue from the sale of food. Further, s. 561.695(5)(b), F.S., prohibits stand-alone bars from serving free-food, but does allow customary bar snacks to be served without charge.

Reporting Requirement for Stand-Alone Bars

To verify compliance with the food sales limitation, s. 561.695(5), F.S., requires that after the initial designation in order to continue to qualify as a stand-alone bar the licensee must submit to the division, on or before the licensee's annual renewal date, an affidavit that certifies compliance. Moreover, subsection (6) of s. 561.695, requires that every third year after the initial designation and on or before the annual license renewal, a stand-alone bar that serves food, other than pre-packaged items, must file with the DABT, in a format established by rule of the division, an "agreed upon procedures report" prepared by a Florida Certified Public Accountant attesting to licensee's compliance with the food sales limitation for the preceding 36-month period. The first triennial report is due by September 30, 2006, which is the first applicable renewal date for designated stand-alone bars.

Subsection (8) of s. 561.695, F.S., establishes penalties for violations of the food sales limitation. For a first violation the vendor may receive a warning or a penalty of up to $500; for a second violation within two years after the first violation, the vendor is subject to a penalty of not less than $500 or more than $2,000; for a third or subsequent violation within two years after the first violation, the vendor's stand-alone bar designation is suspended for up to 30 days and the vendor is subject to a fine of not less than $500 or more than $2,000; and for the fourth or subsequent violation the vendor shall receive a 60-day suspension of the right to maintain a stand-alone bar and be subject to a fine of not less than $500 or more than $2,000 or the designation may be revoked.

Following passage of the implementing legislation, the Florida Institute of Certified Public Accountants (FICPA) assigned a task force of CPAs that practice in the area of tax administration to review and comment on the legislation and the DBPR proposed rules.[1] The FICPA has since expressed concern regarding the required agreed upon procedures report.

According to the Florida Institute of Certified Public Accounts, an "agreed upon procedures report" is defined in section 201 of the Attestation Standards of the American Institute of Certified Public Accountants [AICPA] as:

> An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties. Because the specified parties require that findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. In an engagement performed under this section, the practitioner does not perform an examination or a review, as discussed in section 101, and does not provide an opinion or negative assurance. Instead, the practitioner's report on agreed-upon procedures should be in the form of procedures and findings.

[1] Public hearings were requested by the Bowling Centers Association of Florida on rules implementing the Clean Indoor Air Act, including rules addressing the records required to maintain the stand alone bar designation. Subsequently, a Petition challenging the validity of the proposed rules was filed on May 20, 2005. A hearing was held before the Division of Administrative Hearings on August 30, 2005. On December 7, 2005, the administrative law judge entered a final order declaring all of the proposed rules as valid exercises of delegated legislative authority and denied the Bowling Centers' petition. This Final Order has been appealed to the 1st DCA.

> As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner's report on such engagements should clearly indicate that its use is restricted to those specified parties.

Further, Section 101 of the Attestation Standards of the American Institute of Certified Public Accountants defines an "examination" in which an opinion is given as:

> In an attest engagement designed to provide a high level of assurance (referred to as an examination), the practitioner's objective is to accumulate sufficient evidence to restrict attestation risk to a level that is, in the practitioner's professional judgment, appropriately low for the high level of assurance that may be imparted by his or her report. In such an engagement, a practitioner should select from all available procedures—that is, procedures that assess inherent and control risk and restrict detection risk—any combination that can restrict attestation risk to such an appropriately low level.

It is relevant to note that the Florida Board of Accountancy adopts the AICPA standards into their administrative rules.[2]

According to the FICPA, in an agreed-upon procedures engagement or report, a certified public accountant (CPA) does not render an opinion regarding the sufficiency of the records provided by the client, including the accuracy and completeness of the records. In the context of the statute and rules, a CPA could only certify that the records provided by the stand-alone bar to a CPA reflect a stated percentage of gross food sales. The FICPA maintains that a Florida CPA could be disciplined by the Board of Accountancy within the DBPR for a violation of professional standards if, in the course of preparing the report, the CPA observes irregularities in the client's records, e.g., that the client is withholding pertinent records from the CPA, or the CPA determines that the client may have committed fraud or other malfeasance such as tax evasion and does not note them in the report. Further, the FICPA has expressed the concern that what the CPA is attesting to may not actually meet the Legislature's original expectation.

The FICPA maintains that the statutes and rules do not adequately address the licensee's required record retention and other internal control procedures while CPA standards of professional conduct require great specificity regarding the form in which records must be kept, e.g. whether a CPA can rely upon records maintained in an electronic format. Moreover the FICPA is concerned that the statutes or rules do not adequately identify what specific steps or procedures are required by the CPA when addressing the lack of internal controls and the resultant reliability of the records.

The FICPA believes that a CPA's performance of an agreed upon procedures report under the current rules may likely be a violation of professional standards, and, consequently, the FICPA will advise its CPA members to refrain from performing the service for stand-alone bars.

Effect of Proposed Change

This legislation repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The legislation retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis. Further, the bill creates new penalty provisions which provide that a vendor's *alcoholic beverage license* may be subject to revocation if the vendor knowingly makes a false statement on the annual affidavit required by s. 561.695(5), F.S.

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[2] 61H1-20.0099, FAC – Standards for Attestation Engagements reads in part: "Standards for Attestation Engagements" shall be deemed and construed to mean Statements on Standards for Attestation Engagements published by the American Institute of Certified Public Accountants..."

The bill does not appear to have a fiscal impact on state or local revenue expenditures or collections; however, it may reduce costs to the business entity.

The bill provides that the act will take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Amends subsection (5), deletes subsection (6), and renumbers subsections (7) through (9) of s. 561.695, F.S., as subsections (6) through (8).

Section 2. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The Division currently conducts complaint-driven compliance audits of alcoholic beverage vendors.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Division of Alcoholic Beverages and Tobacco as of January 3, 2006, there are 1013 stand-alone bars that serve food.[3] These stand alone bars will no longer be required to incur the cost of a CPA to complete an "agreed upon procedures report." The cost savings to these businesses is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[3] According to the Division of Alcoholic Beverages and Tobacco there are 731 stand alone bars that serve no food.

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not grant any new rule-making authority. The bill will require repeal of existing rules as to the method and form for the report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 10, 2006, the Business Regulation Committee adopted one amendment to this legislation and passed HB 317 with CS. That amendment added a new penalty provision which provides that a stand-alone bar's alcoholic beverage license may be subject to revocation if the vendor knowingly makes a false statement on the annual affidavit required by s. 561.695(5), F.S.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to stand-alone bars; amending s. 561.695, F.S.; providing a penalty for a licensed vendor who knowingly makes a false statement on an annual compliance affidavit; removing a requirement that licensed vendors file a procedures report regarding compliance with certain food service limitations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (5) through (9) of section 561.695, Florida Statutes, are amended to read:

561.695 Stand-alone bar enforcement; qualification; penalties.--

(5) After the initial designation, to continue to qualify as a stand-alone bar the licensee must provide to the division annually, on or before the licensee's annual renewal date, an affidavit that certifies, with respect to the preceding 12-month period, the following:

(a) No more than 10 percent of the gross revenue of the business is from the sale of food consumed on the licensed premises as defined in s. 386.203(11).

(b) Other than customary bar snacks as defined by rule of the division, the licensed vendor does not provide or serve food to a person on the licensed premises without requiring the person to pay a separately stated charge for food that reasonably approximates the retail value of the food.

(c) The licensed vendor conspicuously posts signs at each entrance to the establishment stating that smoking is permitted in the establishment.

The division shall establish by rule the format of the affidavit required by this subsection. A licensed vendor shall not knowingly make a false statement on the affidavit required by this subsection. In addition to the penalties provided in subsection (7), a licensed vendor who knowingly makes a false statement on the affidavit required by this subsection may be subject to suspension or revocation of the vendor's alcoholic beverage license under s. 561.29.

~~(6) Every third year after the initial designation, on or before the licensee's annual license renewal, the licensed vendor must additionally provide to the division an agreed-upon procedures report in a format established by rule of the department from a Florida certified public accountant that attests to the licensee's compliance with the percentage requirement of s. 386.203(11) for the preceding 36-month period. Such report shall be admissible in any proceeding pursuant to s.~

~~120.57. This subsection does not apply to a stand-alone bar if the only food provided by the business, or in any other way present or brought onto the premises for consumption by patrons, is limited to nonperishable snack food items commercially prepackaged off the premises of the stand-alone bar and served without additions or preparation; except that a stand-alone bar may pop popcorn for consumption on its premises, provided that the equipment used to pop the popcorn is not used to prepare any other food for patrons.~~

(6) ~~(7)~~ The Division of Alcoholic Beverages and Tobacco shall have the power to enforce the provisions of part II of chapter 386 and to audit a licensed vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(11) for compliance with this section.

(7) ~~(8)~~ Any vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(11) who violates the provisions of this section or part II of chapter 386 shall be subject to the following penalties:

(a) For the first violation, the vendor shall be subject to a warning or a fine of up to $500, or both;

(b) For the second violation within 2 years after the first violation, the vendor shall be subject to a fine of not less than $500 or more than $2,000;

(c) For the third or subsequent violation within 2 years after the first violation, the vendor shall receive a suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted, not to exceed 30 days, and shall be subject to a fine of not less than $500 or more than $2,000; and

(d) For the fourth or subsequent violation, the vendor shall receive a 60-day suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted and shall be subject to a fine of not less than $500 or more than $2,000 or revocation of the right to maintain a stand-alone bar in which tobacco smoking is permitted.

(8) ~~(9)~~ The division shall adopt rules governing the designation process, criteria for qualification, required recordkeeping, auditing, and all other rules necessary for the effective enforcement and administration of this section and part II of chapter 386. The division is authorized to adopt emergency rules pursuant to s. 120.54(4) to implement the provisions of this section.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 355 CS Termination of Insurance Appointments
SPONSOR(S): Evers and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Insurance agents must be licensed by the Department of Financial Services (DFS) to act as an agent for an insurer and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers. Under current law, when an insurer wants to terminate an appointment with an agent, the insurer must give a minimum of 60 days written notice to the agent. Sixty days notice is not required for termination based on grounds that would subject the agent to suspension or revocation of their agent license. The agent and appointing entity (insurer) can shorten the 60 day appointment termination notice requirement by contract.

In cases where the insurer wants to terminate an agent's appointment, the bill lengthens the termination notice requirement from a minimum of 60 days notice to a minimum of 120 days notice if the appointment contract does not specify a termination notice period less than 120 days. The longer notice requirement is only applicable to appointment contracts between agents and insurers entered into or amended on or after July 1, 2006. The 120 day termination notice requirement can be shortened or lengthened in the appointment contract entered into by the agent and appointing entity (insurer). However, if termination notice period is not addressed in the appointment contract, the termination notice period is a minimum of 120 days.

The bill maintains current law regarding termination of an agent based on grounds that would subject the agent to suspension or revocation of their agent license. In other words, termination on such grounds can be made immediately without a minimum termination notice period.

The bill does not change current law relating to termination of an appointment by an agent. In other words, the agent is still allowed to terminate an appointment at any time without having to give the insurer notice of the termination for a specified number of days.

There is no fiscal impact on state or local government.

The bill is effective on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill amends statutory provisions governing the actions of insurance agents and insurers who are parties to an insurance appointment contract relating to the length of termination notice required to be given to the agent by the insurer.

Safeguard Individual Liberty: The bill lengthens the minimum notice requirement an insurer is required to give an insurance agent before the insurer can terminate the agent's appointment with the insurer. The bill requires a minimum notice of 120 days, rather than the minimum notice of 60 days required by current law. The bill precludes an insurer and agent from contracting for a termination notice period shorter than 120 days.

B. EFFECT OF PROPOSED CHANGES:

Licensure of Insurance Agents in Florida

There are many different types of insurance representatives. These include agents, customer representatives, service representatives, adjusters, and others.

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS) to act as an agent for an insurer and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[1] Requirements for insurance agents vary by line and are based upon resident or nonresident license type. "Resident agents" are agents domiciled and residing in the state of Florida.

Insurance agents may be classified according to the number of products they may sell, the type of products they sell, and their place of residency. Classifications include: general lines agent, personal lines agent, health agent, life agent, managing general agent, and limited lines agent.

"General lines agents" are authorized under state law to transact any or all of the following lines of insurance: property, casualty, surety, health, and marine insurance.[2] However, a general lines agent may sell health insurance without being separately licensed as a health agent only for those insurers also represented by that same agent as to property or casualty or surety insurance.

"Personal lines agents" are general lines agents who only sell property and casualty insurance to individuals and families for noncommercial purposes.[3]

"Health agents" represent a health maintenance organization or an insurer covering health insurance only.[4]

"Life agents" generally represent insurers covering life insurance, annuity contracts or viatical settlements.[5]

"Managing general agents" are persons managing all or part of the insurance business of an insurer.[6] A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.[7]

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1 s. 626.112, F.S. (2005).
2 s. 626.015(5), F.S. (2005).
3 s. 626.015(15), F.S. (2005).
4 s. 626.015(6), F.S. (2005).
5 s. 626.015(10), F.S. (2005).
6 s. 626.015(14), F.S. (2005).
7 Id.

"Limited lines agents" are individuals, or in some cases entities, licensed as agents but limited to selling one or more of the following forms of insurance (each requiring a separate license): motor vehicle physical damage and mechanical breakdown; industrial fire or burglary; personal accident; baggage and motor vehicle excess liability; credit life or disability; credit insurance; credit property; crop hail and multiple peril crop insurance; in-transit and storage personal property; communications equipment property, communications equipment inland marine, or communications equipment service warranty agreement sales.[8]

In order to be licensed, each type of agent must meet a set of qualifications specific to the particular line(s) of insurance transacted. But, general requirements for agent licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[9] Applicants for a limited lines license generally do not have to satisfy any pre-licensing education or examination requirements to be licensed. Such applicants must; however, file an application with DFS, be fingerprinted and after obtaining a license, be appointed by an insurance company.

Applicants for a resident agent license must be Florida residents. Applicants for a nonresident license must be licensed in good standing in their home state, but generally do not have to pass a pre-licensing examination because Florida has reciprocity agreements with all states to waive that requirement.

Insurance Agent Appointments

According to DFS, there are currently 191,511 insurance agents licensed in Florida that are appointed. These agents hold almost 2 million appointments. There are also approximately 120,000 agents who are licensed but not appointed.[10]

As noted previously, agents must be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers. There is no statutory limit on the number of appointments or on the number of classifications of appointments an agent can hold at a given time.[11] The only restriction is that the agent must qualify and be licensed for each appointment held.[12] Appointments must be renewed every 24 months and are in effect until suspended, revoked, or terminated.[13] To be appointed, the appointing entity files a form with DFS and pays a fee.[14] Additionally, in most cases, at or before the time of appointment the agent and insurer execute a letter of agreement or appointment contract to coincide with the appointment. The letter of agreement or appointment contract sets forth the agreed upon terms of the appointment between the agent and insurer.

Under current law, an appointment can be terminated at any time by the appointing entity upon a minimum of 60 days written notice to the appointed agent.[15] Sixty days notice is **not** required for termination based on grounds that would subject the appointed agent to suspension or revocation of their agent license.[16] Such grounds include lack of qualifications; material misstatement, misrepresentation or fraud in obtaining the license; willful misrepresentation or deception relating to an insurance policy or annuity contract; lack of trustworthiness; technical incompetence; violations of the Insurance Code; fraudulent or dishonest practices; and others.[17] Additionally, the agent and appointing entity can shorten the 60 day appointment termination notice requirement by contract.

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[8] s. 626.321, F.S. (2005).
[9] *See* s. 626.171, F.S. (2005).
[10] Personal communication from a representative from DFS dated February 1, 2006.
[11] s. 626.331(1), F.S. (2005).
[12] Id.
[13] s. 626.381, F.S. (2005).
[14] s. 626.311(5), F.S. (2005); s. 626.451, F.S. (2005)
[15] s. 626.471 (1), F.S. (2005).
[16] Id.
[17] s. 624.611, F.S. (2005); s. 626.621, F.S. (2005).

Pursuant to s. 626.471(4), F.S., **an agent** can terminate its appointment at any time as long as he or she gives notice to the appointing entity (the insurer) and DFS. However, there is no minimum notice length that applies when an agent is terminating the appointment.

In cases where the insurer wants to terminate an agent's appointment, the bill lengthens the termination notice requirement from a minimum of 60 days notice to a minimum of 120 days notice if the appointment contract does not specify a termination notice period less than 120 days. The longer notice requirement is only applicable to appointment contracts between agents and insurers entered into or amended on or after July 1, 2006. The 120 day termination notice requirement can be shortened or lengthened by the terms of the appointment contract between the agent and appointing entity (insurer). In other words, the parties may be able to contract for a termination notice period of more or less than 120 days.

The bill maintains current law regarding termination of an agent based on grounds that would subject the agent to suspension or revocation of their agent license. In other words, termination on such grounds can be made immediately without a minimum termination notice period.

The bill does not change current law relating to an appointment termination by an agent. In other words, the agent is still allowed to terminate an appointment at any time without having to give the insurer notice of the termination for a specified number of days.

C. SECTION DIRECTORY:

Section 1: Amends s. 624.471, F.S.; increases the notice requirement an appointing entity must give an appointed insurance agent before terminating the appointment if no notice period is specified in ythe appointment contract.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For independent insurance agents, a longer termination notice period allows the agent more time to find a new insurer for the insurance policies they have in their book of business.[18] If the agent is able to

[18] Independent agents are those agents who represent two or more insurers. These agents own their book of business and are paid on a commission basis.

find new insurers to write the policies they have in their book of business, the agent is able to retain the commission on the policy and the policyholder does not have to move to a new agent.

For captive insurance agents, a longer termination notice period allows the agent more time to find a buyer and obtain the insurer's approval for sale of the agent's economic interest in their book of business.[19]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None needed and none provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 7, 2006 the Insurance Committee considered the bill, adopted a one amendment, and reported the bill favorably. The amendment changed the bill to allow the insurance agent and appointing entity (insurer) to set the length of a termination notice by contract. This allows the parties to contractually agree to a termination notice period longer or shorter than 120 days. If the parties do not specify the termination notice period in the appointment contract, the termination notice period is 120 days. The staff analysis was updated to reflect the adoption of the amendment.

[19] Captive agents are those agents who are sell insurance for only one insurer. These agents do not own their book of business, the insurer retains ownership. However these agents own an "economic interest" in their book of business. Owning an economic interest allows an agent, under certain circumstances, to sell the economic interest to a new agent at a negotiated price following termination of the agent's appointment with the insurer. In most cases, the insurer must approve any sale of an agent's "economic interest."

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to termination of insurance appointments; amending s. 626.471, F.S.; increasing a period of advance written notice of intention to terminate required to be provided by appointing entities to appointees under a contract; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 626.471, Florida Statutes, is amended to read:

626.471 Termination of appointment.--

(1) Subject to an appointee's contract rights, an appointing entity may terminate its appointment of any appointee at any time. Except when termination is upon a ground which would subject the appointee to suspension or revocation of his or her license and appointment under s. 626.611 or s. 626.621, and except as provided by contract between an ~~the~~ appointing entity and an ~~the~~ appointee entered into or amended on or after

July 1, 2006, the appointing entity shall give at least 120 ~~60~~ days' advance written notice of its intention to terminate such appointment to the appointee, either by delivery thereof to the appointee in person or by mailing it, postage prepaid, addressed to the appointee at his or her last address of record with the appointing entity. Notice so mailed shall be deemed to have been given when deposited in a United States Postal Service mail depository.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 361 CS Automated Teller Machine Transaction Charges
SPONSOR(S): Carroll
TIED BILLS: **IDEN./SIM. BILLS:** SB 704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	13 Y, 0 N, w/CS	Carlson	Carlson
2) Tourism Committee	7 Y, 0 N	McDonald	McDonald
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

HB 361 CS allows the operator of an automated teller machine (ATM) to charge an access fee or surcharge to a customer conducting a transaction using an account from a financial institution that is located outside the United States. The fee or surcharge cannot otherwise be prohibited under state or federal law.

The bill has no apparent fiscal impact on state or local government.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

VISA and MasterCard operating rules prohibit the assessment of access fees or surcharges by ATM operators on international cardholders except in states where it is expressly permitted by law.[1] The rules are intended to avoid confusing international cardholders, who rarely have to pay ATM surcharges.[2]

A number of states have passed legislation allowing for the assessment of fees or surcharges on international cardholders, including Alabama, Arkansas, California, Georgia, Idaho, Louisiana, Maine, Mississippi, Montana, Nevada, Tennessee, Texas, Washington and Wyoming.[3]

Section 655.005(1)(h), F.S., defines a "financial institution" as a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union.

Section 655.960(3), F.S., defines an "automated teller machine" as any electronic information processing device located in Florida which accepts or dispenses cash in connection with a credit, deposit, checking, or convenience account. The definition does not include devices used solely to facilitate check guarantees or check authorizations or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier.

Effect of Proposed Changes:

Effective July 1, 2006, the bill creates a new section of law that will allow the operator of an ATM, as defined in s. 655.960, F.S., to impose an access fee or surcharge not otherwise prohibited by state or federal law to a customer conducting a transaction using an account from a financial institution, as defined in s. 655.005, F.S., that is located outside the United States.

C. SECTION DIRECTORY:

Section 1. Creates s. 655.966, F.S., relating to ATM transaction charges.
Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[1] According to an article published by ATMmarketplace.com on March 21, 2005 and reprinted at www.greensheet.com/PriorIssues-/050401-/11.htm. Copy on file with Committee staff.
[2] Id.
[3] Id. California and Washington passed legislation after the March 21, 2005 article.

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should have a positive effect on ATM operators, who will be able to impose a fee or surcharge for international cardholders. The bill will impact international cardholders, who will have to pay new fees or surcharges. This will add to the cost of any travel to Florida (as it would to any other state that has passed similar legislation).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 10, 2005, the Economic Development, Trade and Banking Committee adopted a strike-everything amendment to HB 361. The amendment corrected two cross-references: replaced the term "owner" with the statutorily-defined term "operator," and clarified that the access fee or surcharge that may be imposed must not otherwise be prohibited by state or federal law.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to automated teller machine transaction charges; creating s. 655.966, F.S.; authorizing the operator of an automated teller machine to charge an access fee or surcharge for transactions using accounts from certain financial institutions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 655.966, Florida Statutes, is created to read:

655.966 Automated teller machine; surcharge.--The operator of an automated teller machine, as defined in s. 655.960(3), may charge an access fee or surcharge not otherwise prohibited under state or federal law to a customer conducting a transaction using an account from a financial institution, as defined in s. 655.005(1)(h), that is located outside of the United States.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 649 CS Home Warranty Associations
SPONSOR(S): Hasner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1620

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	16 Y, 0 N, w/CS	Tinney	Cooper
2) Commerce Council		Tinney	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

Chapter 634, F.S., regulates warranty associations, including motor vehicle service agreement companies, home warranty associations, and service warranty associations. A typical home warranty offers a homeowner protection for structural components of the home, appliances, and appliance systems. For example, a home warranty may cover kitchen and other household appliances. Additional coverage may be available for heating, ventilation, and air conditioning systems (HVAC); a pool or spa; exposed plumbing, e.g., toilets, sinks, spigots; roofs; and exposed electrical systems, e.g., ceiling fans, among other household furnishings and structures. The price of a 1-year home warranty typically varies in a range from $250 to $450, depending on the appliances and structural components covered, although the warranty may be renewed.

The regulation of warranty associations is assigned to the Office of Insurance Regulation (OIR), the state agency that also regulates insurers in Florida. OIR reports there are approximately 180 licenses issued to sell warranties in the state, although only 21 of the 180 are licenses for home warranty associations. In addition, an insurer authorized to sell property and casualty insurance in Florida, also may request a line of business authority to sell auto, home, and service warranties. OIR reports that an estimated 62 property and casualty insurers have an active line of business to sell home warranties.

The law regarding home warranty association forms and approval of forms by OIR is amended by the bill. Under the changes proposed by the bill, OIR is authorized to approve a form allowing the renewal of a home warranty more than nine times. The Office of Insurance Regulation also is authorized by the bill to approve a form providing a higher price to renew a warranty than the price to purchase a new warranty for the same home. The bill also specifies that if a home warranty association chooses to use a contractual liability insurance policy in lieu of establishing an unearned premium reserve, the contractual liability policy is required to cover all home warranty contracts issued during the policy period, regardless of whether the appropriate premium for all outstanding warranties has been paid to the issuer of the contractual liability policy.

The bill prohibits associations that issue home, automobile, and service warranties from making or securing loans from association funds for officers, directors, and shareholders. Current provisions regarding the cancellation of a home warranty are repealed and replaced with new, more detailed consumer protection requirements for cancellations and refunds associated with cancellations.

Under the bill, at the time a home sells, a service warranty association licensed under Part III of ch. 634, F.S., is authorized also to sell service warranties for homes, provided the warranties cover only systems and appliances, without warranting any structural component of the house. This means a service warranty association is authorized by the bill to sell service warranties, at the time a house is sold, under the association's license for service warranties, without seeking an additional license for home warranties.

There is no fiscal impact to OIR relating to the bill. Under the bill, homeowners who purchase a home warranty may be required to pay more to renew a warranty than the warranty would cost if purchased for the first time. Service warranty associations are authorized by the bill also to sell limited home warranties without seeking a separate home warranty association license from OIR; this will save service warranty associations the fee for a separate license.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: Under the bill, a home warranty association will face fewer prohibitions on the sale and renewal of home warranties. A service warranty association is authorized by the bill to sell limited home warranties, at the time a house is sold, under its existing authority from OIR. This means a service warranty association may sell limited home warranties at the time a house is sold, in addition to service warranties, without paying the extra fee for a home warranty license.

Promote Personal Responsibility: Under the bill, OIR is no longer prohibited from approving forms that allow home warranty associations to charge more to renew a home warranty than the price to purchase the same warranty originally. Under current law, the price to renew a home warranty may not exceed the amount that would be charged if the contract were purchased on the same home for the first time.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 634, F.S., regulates warranty associations, including motor vehicle service agreement companies, home warranty associations, and service warranty associations. Motor vehicle service agreement companies typically offer auto owners extended warranties, or a warranty beyond the terms of an auto manufacturer's warranty. A service warranty association generally offers a consumer a warranty on a newly-purchased appliance or product for home use, e.g., refrigerator, TV, stereo, among many other products.

A typical home warranty offers a homeowner protection for structural components or kitchen and other household appliances. Additional coverage may be available for heating, ventilation, and air conditioning systems (HVAC); a pool or spa; exposed plumbing, e.g., toilets, sinks, spigots; roofs; and exposed electrical systems, e.g., ceiling fans, among other household furnishings and structures. The price of a 1-year home warranty typically varies in a range from $250 to $450, depending on the appliances and structures covered, although the warranty may be renewed.

A home warranty generally is offered in tandem with the purchase either of a new home or the sale of an existing home. The law also authorizes a home warranty to be offered to a homeowner in conjunction with a home-equity loan or second mortgage of at least $5,000. Similarly, if a homeowner undertakes home improvements with a value of at least $7,500, the homeowner may purchase a home warranty to coincide with the improvements. Real estate agents, mortgage brokers, and closing agents are primary sources for sales of home warranties. In most cases, such warranties are offered to home buyers at the time a buyer is signing mortgage documents.

The regulation of warranty associations is assigned to the Office of Insurance Regulation (OIR), the state agency that also regulates insurers in Florida. Although a warranty generally is not thought of as a traditional insurance product, such warranties protect policyholders from certain future risks, as specified in the contract, and associated costs.

As a result of indemnifying a warranty holder from future misfortune, a warranty association is, in effect, protecting the warranty holder from specified future risks, for a specified time period. Because warranty associations indemnify warranty holders from risk or loss associated with either a future structural defect in a home or with the appliances in the home, OIR is directed by law to regulate warranty

associations, including approval of forms, complaint investigation, and monitoring reserve requirements, among other duties. OIR is not required to approve rates for warranties, however.

The Office of Insurance Regulation reports that there are approximately 180 licenses issued to sell warranties in the state, although only 21 of the 180 are for home warranty associations. In addition, an insurer authorized to sell property and casualty insurance in Florida, also may request a line of business authority to sell auto, home, and service warranties. OIR reports that an estimated 62 property and casualty insurers have an active line of business to sell home warranties.

In Florida, an estimated 40 licensed warranty associations have formed a trade association, the Florida Service Agreement Association; the association was originally formed in 1989.[1] Representatives of the association report that association members meet annually. Members of the state warranty association include insurers, independent warranty administrators, retailers, auto dealers, air conditioning contractors, and manufacturers, most of which offer warranties in addition to their core business.[2]

A warranty association may employ repair persons who actually repair covered appliances and structures, although an association also may contract for repair services. Terms of warranties vary; for example, in some cases a warranty holder/homeowner may be required to make a co-payment at the time a repair is made. Other warranties may only require an annual premium, without a co-payment, if a repair person is called to the home.

Current Law and Changes Proposed by the Bill

Laws governing auto warranty, home warranty, and service warranty associations specify the types and amounts of liquid reserves the various associations must maintain to ensure solvency for settling customer claims. The laws governing the three types of warranty associations currently do not prohibit the respective associations from using association funds to secure the debts of, or otherwise offer collateral for, a security or debt instrument of officers of the association. Under the bill, a home warranty, auto warranty, and service warranty association all are prohibited from securing debts of an association director, officer, or controlling stockholder using association monies. This prohibition applies only to an investment or loan reported by the respective association in its financial statements after the third quarterly financial statement of 2006.

Current statutory definitions relating to home warranty associations are amended by the bill.[3] Under the bill, the definition for "home warranty" is amended to allow a service warranty association also to issue a service warranty at the time a home is sold if the warranty covers only appliances and systems within the home, but does not cover any structural components of the home, e.g., roof, walls, or foundation. This means a service warranty association may sell warranties, at the time a home is sold, for appliances and home systems, e.g., heating and air conditioning, under its service warranty license, rather than applying for a separate home warranty license, as well.

Current law specifying the reserve requirements for a home warranty association is amended by the bill.[4] In current law, one method for providing the unearned premium reserve required of a home warranty association is through the purchase of contractual liability insurance.[5] Under the bill, a contractual liability policy purchased by a home warranty association is required to insure all warranty contracts in effect during the term of the liability policy, even if the warranty association fails to remit the full premium to the insurer.

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[1] Personal Communication with the Executive Director of the Florida Service Agreement Association, dated February 3, 2006; on file with Insurance Committee.
[2] *Id.*
[3] *See* s. 634.401, F.S., 2005, for definitions pertaining to home warranty associations.
[4] Section 634.3077, F.S., 2005, outlines the financial requirements, i.e., the reserve requirements, for a home warranty association.
[5] *See* s. 634.3077(3), F.S., 2005.

The law requires a home warranty association to file its application and other similar forms with OIR for approval.[6] Current law requires OIR to disapprove a home warranty association form if the form allows for more than nine annual renewals.[7] Similarly, OIR may not approve a form if it allows a home warranty association to charge a higher premium to renew a warranty than the current price to purchase a new warranty for the same home.[8] The law also prohibits a home warranty association from charging a fee to inspect the premises to be covered by the warranty.[9]

The law regarding home warranty association forms and approval of forms by OIR is amended by the bill. Under the changes proposed by the bill, OIR is authorized to approve a form to allow the renewal of a home warranty more than nine times. The bill also authorizes OIR to approve a form providing a higher price to renew a warranty than the price to purchase a new warranty for the same house. The bill does not authorize a home warranty association to charge an inspection fee before selling or renewing a home warranty.

New provisions are added by the bill regarding cancellation of a home warranty either by the warranty holder or the warranty association. As a result of the new provisions, current law at s. 634.345, F.S., is repealed by the bill. A cross-reference to the law repealed by the bill also is deleted.

A home warranty contract is required by the bill to outline the association's cancellation policy. Under the bill, a purchaser may cancel a home warranty within 10 days after the purchase and receive a full refund of gross premium paid, less any claims paid during the first 10 days. An association may withhold an administrative fee, not to exceed 5 percent of the gross premium paid, for a cancellation made within 10 days of purchasing the home warranty.

If a warranty holder cancels his or her home warranty after 10 days, the association is required by the bill to refund the purchaser at least 90 percent of the unearned, pro rata premium, less any claims that have been paid. However, if the warranty association cancels the warranty after the first 10 days, for any reason other than fraud or misrepresentation on the part of the purchaser, the association must refund all the unearned pro rata premium to the purchaser.

C. SECTION DIRECTORY:

Section 1 creates s. 634.042, F.S., to prohibit specified investments and loans by motor vehicle service agreement companies.

Section 2 amends definitions in s. 634.301, F.S., relating to home warranty associations.

Section 3 creates s. 634.3076, F.S., to prohibit specified investments and loans by home warranty associations.

Section 4 amends s. 634.3077, F.S., relating to contractual liability policy requirements for home warranty associations.

Section 5 amends s. 634.312, F.S., relating to the forms a home warranty association must submit to OIR for approval.

Section 6 amends s. 634.336, F.S., to delete an obsolete cross-reference.

Section 7 creates s. 634.4062, F.S., to prohibit specified investments and loans by service warranty associations.

Section 8 repeals s. 634.345, F.S., because similar provisions are addressed elsewhere by the bill.

Section 9 provides an effective date of July 1, 2006 for the bill.

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[6] Section 634.312, F.S., 2005.
[7] Section 634.312(3), F.S., 2005.
[8] *Id.*
[9] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Under the bill, a service warranty association is authorized to sell limited service warranties at the time a home is sold. A service warranty association no longer is required to obtain a separate a home warranty association license from OIR before selling a service warranty at the time a home is sold.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Insurance Regulation notes in its analysis of the bill that, under the changes in the bill (lines 117 and 118), a home warranty association will be authorized to charge a consumer who seeks to renew a home warranty more than the cost of a new warranty for the same home.[10] Current law prohibits a warranty association from charging a consumer more to renew a home warranty than the cost for the same warranty at the time a house is sold.

This change may result in home warranty associations charging more to a consumer for the renewal of a home warranty than the cost to purchase the warranty on the same home for the first time, even if no additional appliances or other structures in the home will be covered. It is not possible to estimate the impact of this change on consumers, however, since pricing for, and coverages under, home warranties vary.

The bill authorizes an existing service warranty association also to sell limited service warranties under the service warranty association's existing license, at the time a home is sold. According to OIR, this means that each of the nine warranty associations currently holding licenses to issue both service warranties and home warranties could save $200 each year.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

[10] Legislative Bill Analyis from OIR; dated January 30, 2006.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

OIR notes that the elimination of the prohibition against approval of forms to charge a consumer more to renew a home warranty than the cost to purchase a new warranty of the same home for the first time, will be inconsistent with similar current law governing traditional insurance contracts. Under s. 626.9541, F.S., the law governing unfair methods of competition and unfair or deceptive acts, an insurer is prohibited from selling an identical or substantially similar product at different prices to customers of the same age and demographics, i.e., persons in the same actuarial class.[11]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the February 7, 2006 meeting of the House Insurance Committee, the committee adopted an amendment to HB 649. The amendment made the following changes to the original bill:

- Prohibits associations that issue home, automobile, and service warranties from making or securing loans from association funds for officers, directors, and shareholders.

- Specifies conditions under which a home warranty agreement may be cancelled by the purchaser or issuer and specifies refund amounts due following cancellation. (Repeals current law and moves the new provisions regarding home warranty cancellation to a new section of law.)

- Requires a contractual liability insurance policy to pay home warranty customer claims made during the term of the policy, regardless of whether the warranty association has remitted the full premium to the insurer.

- Allows a service warranty association licensed under Part III of ch. 634, F.S., to sell service warranties at the time a house is sold, provided the warranties cover only systems and appliances, without warranting any structural component of the house. This means a service warranty association is authorized to sell limited warranties, at the time the house is sold, under the service warranty association license, without seeking an additional license for home warranties.

This analysis has been updated to reflect the amendment adopted by the Insurance Committee 2/7/06.

[11] *See* s. 626.9541(1)(g), F.S., 2005.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to warranty associations; creating s. 634.042, F.S.; prohibiting a motor vehicle service agreement company from investing or lending company funds for specified purposes; amending s. 634.301, F.S.; revising a definition of "home warranty" to specify nonapplication to certain contracts or agreements; creating s. 634.3076, F.S.; prohibiting a home warranty association from investing or lending association funds for specified purposes; amending s. 634.3077, F.S.; specifying an additional requirement for contractual liability insurance purchased by a home warranty association; amending s. 634.312, F.S; revising a prohibition against the Office of Insurance Regulation for nonapproval of certain forms; specifying cancellation requirements for home warranty contracts; providing return of premium requirements; authorizing an administrative fee; specifying refund amounts for a home warranty under certain circumstances; amending s. 634.336, F.S.; removing

a cross-reference to conform; creating s. 634.4062, F.S.; prohibiting a service warranty association from investing or lending association funds for specified purposes; repealing s. 634.345, F.S., relating to a buyer's right to cancel a home warranty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 634.042, Florida Statutes, is created to read:

634.042 Prohibited investments and loans.--A motor vehicle service agreement company shall not directly or indirectly invest in or lend its funds upon the security of any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the motor vehicle service agreement company. This prohibition applies only to investments and loans initially reported on motor vehicle service agreement financial statements after the third quarterly statement for 2006.

Section 2. Subsection (3) of section 634.301, Florida Statutes, is amended to read:

634.301 Definitions.--As used in this part, the term:

(3) "Home warranty" or "warranty" means any contract or agreement:

(a) Offered in connection with the sale of residential property;

(b) Offered in connection with a loan of $5,000 or more which is secured by residential property that is the subject of

the warranty, but not in connection with the sale of such property; or

(c) Offered in connection with a home improvement of $7,500 or more for residential property that is the subject of the warranty, but not in connection with the sale of such property;

whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, this part does not prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. This part does not permit the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice constitutes the transaction of insurance subject to all requirements of the insurance code. This part does not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners and which perform repairs and maintenance for appliances or maintenance of the residential property. This part does not apply to a contract or agreement offered in connection with a sale of residential property by a

warranty association in compliance with part III, provided such contract or agreement only relates to the systems and appliances of the covered residential property and does not cover any structural component of the residential property.

Section 3. Section 634.3076, Florida Statutes, is created to read:

634.3076 Prohibited investments and loans.--A home warranty association shall not directly or indirectly invest in or lend its funds upon the security of any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the home warranty association. This prohibition applies only to investments and loans initially reported on a home warranty association's financial statements after the third quarterly statement for 2006.

Section 4. Paragraph (d) is added to subsection (3) of section 634.3077, Florida Statutes, to read:

634.3077 Financial requirements.--

(3) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the office that 100 percent of its claim exposure is covered by such insurance. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the office as financially capable of meeting the obligations incurred pursuant to the policy. For purposes of this subsection, the contractual liability policy shall contain the following provisions:

(d) The contractual liability insurance policy shall insure all home warranty contracts that were issued while the policy was in effect whether or not the premium has been remitted to the insurer.

Section 5. Subsection (3) of section 634.312, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

634.312 Filing; ~~,~~ approval of forms.--

(3) The office shall not approve any such form that imposes ~~which allows for more than nine annual renewals or which renewal contracts provide that the cost of renewal exceeds the then-current cost for new warranty contracts or impose~~ a fee for inspection of the premises.

(8) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium.

Section 6. Subsection (8) of section 634.336, Florida Statutes, is amended to read:

634.336 Unfair methods of competition and unfair or deceptive acts or practices defined.--The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(8) COERCION OF DEBTORS.--When a home warranty is sold as authorized by s. 634.301(3)(b):

(a) Requiring, as a condition precedent or condition subsequent to the lending of the money or the extension of the credit or any renewal thereof, that the person to whom such credit is extended purchase a home warranty; or

(b) Failing to provide the advice required by s. 634.344~~;~~ ~~or~~

~~(c) Failing to comply with the provisions of s. 634.345~~.

Section 7. Section 634.4062, Florida Statutes, is created to read:

634.4062 Prohibited investments and loans.--A service warranty association shall not directly or indirectly invest in or lend its funds upon the security of any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the service warranty association. This prohibition applies only to investments and loans initially reported on a service warranty association's financial statements after the third quarterly statement for 2006.

Section 8. Section 634.345, Florida Statutes, is repealed.

Section 9. This act shall take effect July 1, 2006.